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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 135

[Docket No.: FAA-2018-0279; Notice No. 18-01]

RIN 2120-AK94

IFR Operations at Locations Without Weather Reporting

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The proposed rule would allow helicopter air ambulance (HAA) operators to conduct instrument flight rules (IFR) departure and approach procedures at airports and heliports that do not have an approved weather reporting source in HAA aircraft without functioning severe weather detection equipment (airborne radar or lightning strike detection equipment), when there is no reasonable expectation of severe weather at the destination, the alternate, or along the route of flight. This rule would also update requirements to address the discontinuance of area forecasts, currently used as flight planning and pilot weather briefing aids. Additionally, this rulemaking proposes to update requirements regarding HAA departure procedures to include additional types of departure procedures that are currently acceptable for use.

DATES: Send comments on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Send comments identified by docket number FAA-2018-0279 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.
- Mail: Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at 202-493-2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tom Luipersbeck, Air Transportation Division, 135 Air Carrier Operations Branch, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone 202-267-8166; email: Thomas.A.Luipersbeck@faa.gov

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This rulemaking would amend 14 CFR 135.611(b) to allow helicopter air ambulance (HAA) operators using aircraft without functioning severe weather detection equipment (airborne radar or lightning strike detection equipment), to conduct IFR departure and approach procedures at airports and heliports that do not have an approved weather reporting source. In conducting these operations, the pilot in command must not reasonably expect to encounter severe weather at the destination, the alternate, or along the route of flight. This action would encourage utilization of the IFR infrastructure to the fullest extent possible, thus increasing the overall safety of HAA Operations.

This rulemaking also proposes to update certain provisions in § 135.611(a)(1) to address the discontinuance of area forecasts, currently used as flight planning and pilot weather briefing aids, and the transition to digital and graphical alternatives already being produced by the U.S. National Weather Service (NWS). Additionally, this rulemaking proposes to update requirements in § 135.611(a)(3) regarding HAA departure procedures to include additional types of departure procedures that are currently acceptable for use.

II. Authority for this Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. This rulemaking is promulgated under the general authority described in 49 U.S.C. 106(f), 44701(a), and 44730.

III. Background

Section 135.611 contains provisions to allow certificate holders to conduct HAA IFR operations at airports with an instrument approach procedure and at which a weather report is not available from the NWS, a source approved by the NWS, or a source approved by the FAA. Each aircraft operated under § 135.611 must be equipped with functioning equipment to detect severe weather, even when weather reports and forecasts indicate no foreseeable severe weather conditions will exist along the route to be flown.

A. Statement of the Problem

Section 135.611(b) unnecessarily limits the ability of certain HAA operators to conduct IFR departure and approach procedures at airports and heliports that do not have an approved weather reporting source. The current limitations inadvertently restrict HAA operations conducted when no severe weather is present at the airport or along the route, by requiring *all* HAA operated under § 135.611 be equipped with functioning severe weather detection equipment. The FAA has determined this requirement is too broad, because a pilot in command can discern whether severe weather at the destination, the alternate airport, or along the route, will exist. The proposed amendment will allow pilots to conduct operations if current weather reports indicate thunderstorms or other hazardous weather is not expected during the flight.

The FAA intends for the proposed amendment to § 135.611 to encourage IFR operations and result in more aircraft operating in positively controlled environments, thereby increasing the safety of HAA operations. Altering the requirements of § 135.611(b) will increase the frequency of IFR operations, thereby minimizing pilots' operations under visual flight rules (VFR) in marginal visual meteorological conditions. The proposed amendment would provide greater opportunity for HAA operations to enter the National Airspace System (NAS) under IFR than previously permitted.

B. Exemption History

Since the requirement in § 135.611(b) was established (79 FR 43622, July 28, 2014), nine HAA certificate holders have petitioned for exemptions to § 135.611(b) to allow them to operate without functioning severe weather detection equipment when severe weather conditions are not reasonably expected along the route to be flown.¹ In such circumstances, the FAA has issued exemptions to HAA operators that have allowed the safe conduct of IFR departure and approach procedures at airports and heliports that do not have an approved weather reporting source in HAA aircraft without functioning severe weather detection equipment (airborne radar or lightning strike detection equipment).

The FAA found that the first petition, which granted the same relief as that provided in this proposed rulemaking, would set a precedent. Therefore, to allow for the public to comment on the petition, a summary of the petition was published in the Federal Register on June 15, 2015 (80 FR 34195). No comments were received.

¹ See the following FAA grants of petitions for exemption: Docket Nos. FAA-2016-5575, FAA-2016-5028, FAA-2015-3934, FAA-2015-3854, FAA-2015-3740, FAA-2015-2696, FAA-2015-2694, FAA-2015-1868, and FAA-2015-1867.

IV. Discussion of the Proposal

A. Modification of Requirement for Severe Weather Detection Equipment

Existing § 135.611 permits HAA certificate holders to conduct helicopter IFR operations at airports with an instrument approach procedure and at which a weather report is not available from the NWS, a source approved by the NWS, or a source approved by the FAA. Each HAA aircraft operated under existing § 135.611 must be equipped with functioning equipment to detect severe weather, even when weather reports and forecasts indicate no foreseeable severe weather conditions will exist along the route to be flown.

The FAA's initial intent of requiring severe weather detection equipment was to help the pilot ascertain the weather in the aircraft's vicinity (75 FR 62640, 62650 (October 12, 2010)) and thus mitigate the risk of inadvertently encountering instrument meteorological conditions (IMC). The agency has reconsidered this requirement and determined it is overly broad, because it applies even in circumstances in which the pilot does not reasonably expect to encounter severe weather along the route or at the destination airport. Further, existing training on meteorology to ensure a practical knowledge of weather phenomena, including the principles of frontal systems, icing, fog, thunderstorms, meteorology hazards applicable to the certificate holder's areas of operation, adverse weather avoidance practices, and weather planning are all currently part of required training program curriculum segments for HAA operations. This training, together with the pre-flight risk analysis required in § 135.617, provide the pilot in command with the tools by which to ascertain whether severe weather may reasonably exist along the route of a flight or at the destination airport. Pre-flight risk analysis and

training designed specifically for HAA operations function to verify the pilot in command can adequately analyze departure, en route, destination and forecasted weather. The continued existence of these requirements verifies a pilot in command does not need severe weather detection equipment when he or she does not reasonably expect to encounter severe weather.

Pilots' determinations concerning the potential for encountering severe weather conditions will result from the routine flight planning they complete prior to operating any aircraft.² Prior to the first leg of each HAA operation, the pilot in command must conduct a preflight risk analysis pursuant to § 135.617 to ensure awareness of departure, en route, destination, and forecasted weather. The risk analysis also includes determining whether another HAA operator has rejected a flight request based on the presence of any severe weather or dangerous meteorological phenomena. Overall, the pilot in command will use the knowledge and skills he or she maintains pursuant to the provisions of part subpart L of part 135 in determining the likelihood of encountering severe weather.

By eliminating the § 135.611(b) requirement for each HAA aircraft to be equipped with severe weather detection equipment when there is no forecast of severe weather, the proposed amendment would allow more HAA operators to conduct IFR departure and approach procedures at airports and heliports that do not have an approved weather reporting source. This proposed amendment would encourage utilization of the IFR infrastructure to the fullest extent possible by allowing more operators to use the IFR infrastructure, thereby avoiding the potential for controlled flight into terrain accidents

² The FAA provides various resources to which pilots may refer in conducting risk analyses to prepare for flight. See, e.g., Instrument Procedures Handbook, FAA-H-8083-16B (Sept. 14, 2017); Aviation Weather, FAA Advisory Circular 00-6B (Aug. 23, 2016); Pilot's Handbook of Aeronautical Knowledge, FAA-H-8083-25B (2016); Rotorcraft Flying Handbook, FAA-H-8083-21 (2000).

during flights conducted under marginal visual flight rules conditions. This action would also increase the opportunity for access to critical care patient flights when weather conditions are below those required for VFR operation, but do not involve the potential for severe weather.

The FAA emphasizes, however, that if a reasonable expectation of severe weather exists during the flight and in the vicinity of the planned route, the helicopter must be equipped with operable severe weather detection equipment or the flight must be declined or aborted.

B. Updated Requirements

As noted previously, this rulemaking also proposes to update certain other provisions of § 135.611, specifically § 135.611(a)(1) regarding area forecasts and § 135.611(a)(3) regarding departure procedures.

Area Forecasts

The FAA, in coordination with the NWS, expects to discontinue Area Forecasts, currently used as flight planning and pilot weather briefing aids and transition to digital and graphical alternatives already being produced by NWS.³ While the Area Forecast met aviation weather information needs for many years, today the NWS provides equivalent information through a number of better alternatives.⁴ In order to address this future transition, this rulemaking proposes to update the wording of § 135.611(a)(1) from “area forecast” to “weather reports, forecasts, or any combination of them.”

³ Aviation Weather Product Change: Transition of Select Area Forecasts (FAs) to Digital and Graphical Alternatives, 79 FR 35211 (June 19, 2014). In the Notice, the FAA recommended that NWS transition six FAs covering separate geographical areas of the contiguous United States and one area forecast covering Hawaii to digital and graphical alternatives already being produced by NWS. The seven area forecasts affected by this transition included FAUS41 (BOS), FAUS42 (MIA), FAUS43 (CHI), FAUS44 (DFW), FAUS45 (SLC), FAUS46 (SFO), and FAHW31 (Hawaii).

⁴ See id.

Departure Procedures

This rulemaking proposes to update requirements in § 135.611 regarding HAA departure procedures (DP) to include additional types of DP that are currently acceptable for use. A DP is required in order to depart an airport in weather conditions less than VFR. Several types of DPs, however, exist in addition to an obstacle departure procedure cited in the current regulation, such as a diverse departure or standard instrument departure. Based on an evaluation of these departure procedures, FAA has determined that any of these DPs may be appropriate and safe because of ensured obstacle clearance and flyability (when used appropriate to the location). In this rulemaking, the FAA proposes to update the wording in § 135.611(a)(3) from “the published Obstacle Departure Procedure” to “a published Departure Procedure.”

V. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-

4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this Notice of Proposed Rulemaking. Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this rule.

The FAA determined that this action will likely result in regulatory cost savings. Without this rule there will remain in place unnecessary limits on certain helicopter air ambulance (HAA) operations. These limits effectively reduce the number of HAA operations without improving aviation safety. The FAA has been granting exemptions to HAA operators who asked for relief from these limitations and the FAA expects these requests to continue. This change will relieve HAA operators and the FAA of those procedural costs estimated to be \$1,500/exemption. This rule would have eliminated the expense of nine petitions for exemption that the FAA granted.⁵ The FAA has, therefore, determined that this rule has cost-savings, has minimal impact, is not a "significant

⁵ See the following FAA grants of petitions for exemption: Docket Nos. FAA-2016-5575, FAA-2016-5028, FAA-2015-3934, FAA-2015-3854, FAA-2015-3740, FAA-2015-2696, FAA-2015-2694, FAA-2015-1868, and FAA-2015-1867. The FAA subsequently granted six petitions to extend the effective dates of the exemptions.

regulatory action” as defined in section 3(f) of Executive Order 12866, and is not “significant” as defined in DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 96-354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. As this rule removes an unnecessary limitation on the operation of HAA without reducing aviation safety, it will relieve HAA operators of the costs associated with installing unnecessary equipment. Given the demographics on HAA operators, this rule will likely impact a substantial number of small entities. However, it will have a minimal economic impact.

Therefore, the head of the agency certifies the rule is not expected to have a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rule and determined that the rule will have the same impact on international and domestic flights and is a safety rule thus is consistent with the Trade Agreements Act.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of

\$155 million in lieu of \$100 million. This rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this proposed rule.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5-6.6 and involves no extraordinary circumstances.

VI. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would

not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply,

Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a “significant energy action” under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, International Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

D. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

This proposed rule is expected to be an EO 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the Regulatory Evaluation section, above.

VII. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies web page at http://www.faa.gov/regulations_policies or

3. Accessing the Government Publishing Office's web page at
<http://www.gpo.gov/fdsys/>.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects in 14 CFR Part 135

Air Transportation, Aircraft, Aviation safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

PART 135--OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

1. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 41706, 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 44730, 45101–45105; Pub. L. 112–95, 126 Stat. 58 (49 U.S.C. 44730).

2. Amend § 135.611 by revising paragraphs (a)(1), (a)(3) and (b) to read as follows:

§ 135.611 IFR operations at locations without weather reporting.

(a) * * *

(1) The certificate holder must obtain a weather report from a weather reporting facility operated by the NWS, a source approved by the NWS, or a source approved by the FAA, that is located within 15 nautical miles of the airport. If a weather report is not available, the certificate holder may obtain weather reports, forecasts, or any combination of them from the NWS, a source approved by the NWS, or a source approved by the FAA, for information regarding the weather observed in the vicinity of the airport;

* * *

(3) In Class G airspace, IFR departures with visual transitions are authorized only after the pilot in command determines that the weather conditions at the departure point are at or above takeoff minimums depicted in a published Departure Procedure or VFR minimum ceilings and visibilities in accordance with § 135.609.

* * * * *

(b) Each helicopter air ambulance operated under this section must be equipped with functioning severe weather detection equipment, unless the pilot in command reasonably determines severe weather will not be encountered at the destination, the alternate, or along the route of flight.

* * * * *

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44730 in Washington, DC, on April 3, 2018.

John S. Duncan

Executive Director, Flight Standards Service

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